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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 v.

15 LOUIS V. SCHOOLER and FIRST
16 FINANCIAL PLANNING
17 CORPORATION d/b/a WESTERN
18 FINANCIAL PLANNING
19 CORPORATION,

20 Defendants.

Case No.: 3:12-CV-02164-GPC-JMA

ORDER APPROVING:

SALE OF WASHOE V PROPERTY

[ECF No. 1515]

21 Before the Court is the Receiver's Motion for Approval of Sale of Washoe V
22 Property. ECF No. 1515. No opposition was filed. Based upon a review of the moving
23 papers and the applicable law, the Court **GRANTS** the Receiver's motion.

BACKGROUND

24 **A. The SEC Enforcement Action**

25 On January 21, 2016, the Court granted the SEC's motion for final judgment
26 against Defendant Louis V. Schooler. ECF No. 1170. The SEC had initiated this civil
27 action against Defendant Schooler and Western Financial Planning Corporation
28 ("Western") four years earlier, on account of their practice of defrauding investors into

1 purchasing unregistered securities. *Id.* (citing Second Summary Judgment Order, ECF
2 No. 1081). To carry out the scheme, Defendant Western bought undeveloped real estate,
3 with cash or through financing, and simultaneously formed one or more General
4 Partnerships (“GPs”) to own the land. First Summary Judgment Order, ECF No. 1074 at
5 10. Western then sold General Partnership units to investors and sold the undeveloped
6 real estate to the General Partnerships. *Id.* at 10. In total, Western raised approximately
7 \$153 million from almost 3,400 investors through implementing this scheme. *Id.*

8 **B. The Decline of the General Partnership Assets**

9 In 2013, the Court-appointed Receiver, Thomas Hebrank, engaged licensed
10 appraisers to value the 23 properties owned by the General Partnerships. ECF No. 203 at
11 2. Those professionals determined that the land was worth \$16,328,000 and that the net
12 appraised value (appraised value less outstanding balances on all mortgages) of the
13 properties was \$12,860,661. *Id.* The net appraised value represented just 8.41% of the
14 total funds that the general partners had invested in the land. *Id.* The Receiver further
15 estimated that, based on the then-current appraised values of the land, the average GP
16 investor would suffer an 88.40% loss if the GP properties were sold in 2013. *Id.*

17 Three years later, soon after final judgment was entered, the Receiver moved for
18 authority to conduct an Orderly Sale of the General Partnership Properties (“Orderly
19 Sale”). Motion for Orderly Sale, ECF No. 1181-1. In the Motion, the Receiver indicated
20 that the aggregate value in the GP accounts had been steadily decreasing while litigation
21 was ongoing. *See id.* In September 2012, the Receivership had assets of \$6.6 million.
22 *Id.* at 1. By the end of 2015, the assets had dropped to \$3.5 million, and the Receiver had
23 reason to believe that the value of the Receivership would continue to drastically
24 decrease through the end of 2016. This decline, he noted, was due to three main factors:
25 (1) 14 of the 23 properties were not appreciating in value¹; (2) the properties were not
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28 ¹ By way of example, the Receiver notes that the value of these 14 properties in 2016, \$3,732,815, was about
\$400,000 less than their value in 2013, \$4,137,000. *Id.* at 2.

1 worth enough to cover the costs of the GPs carrying the properties; and (3) low levels of
2 investor contributions to pay GP administrator fees, tax preparation fees, property taxes,
3 property insurance premiums, and notes owed to Western. *See id.* at 1-2. In other words,
4 the Receiver concluded, because the money being spent to hold the GP properties was
5 disproportionately high in relation to the value of the GP's real estate assets, the
6 Receivership was in a steady decline. *Id.*

7 In order to prevent the value of the Receivership from falling into further decline,
8 the Receiver proposed that the GP properties be sold in accordance with Court-approved
9 orderly sale procedures. *Id.* The Receiver's proposal explained that the best way to
10 maximize the value of all of the GP assets for the benefit of all investors, irrespective of
11 any given investors' direct property interest, was to initiate an orderly sale of the GP
12 properties. *Id.* The Receiver estimated that the Receivership, after conducting sales of
13 the GP properties, Western's properties and asset recovery, would be worth \$21,804,826.
14 *Id.* at 16.

15 **C. The Receiver's Motion for Orderly Sale**

16 On May 20, 2016, the Court held a hearing on the Receiver's Motion for Orderly
17 Sale, at which time the Court heard from the SEC, Defendant, the Receiver, and the
18 investor-intervenors — that is, those investors who were granted permission under Rule
19 23 to intervene to oppose the Receiver's Motion. *See* ECF No. 1298. A short time
20 thereafter, on May 25, 2016, the Court approved, in part, the Receiver's Orderly Sale
21 process.² ECF No. 1304.

22 In approving the Orderly Sale, the Court addressed and evaluated the concerns
23 expressed by the Receiver, the SEC, and myriad investors, all of whom held differing
24 positions on whether the Orderly Sale would benefit the Receivership estate. *See*

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27 ² The Court directed the Receiver to file a Modified Orderly Sale Process that incorporated the public sale
28 process consistent with the requirement of 28 U.S.C. § 2001. ECF No. 1304. The Receiver filed a modified
proposal on June 8, 2016 (ECF No. 1309) and the Court approved the modified proposal on August 30, 2016
(ECF No. 1359).

generally ECF Nos. 1181 (Motion for Orderly Sale), 1232 (SEC Response), 1234 (Dillon Investors' Response), 1235 (Graham Investors' Response); *see also*, *e.g.*, ECF Nos. 1240, 1242, 1244, 1249-1257 (Letters from Investors). The Court also took into consideration the recommendations of the investors' experts, as set forth in the Xpera Report. *See* ECF No. 1304 at 16. The Xpera Report, the Court noted, substantially agreed with the Receiver on how to maximize the value of the Receivership estate and, for the most part, agreed on the appraised value of the various GP properties. *Id.* As such, the Court directed the Receiver, where feasible, to incorporate the recommendations of the Xpera Report into his ultimate Orderly Sale proposal. *Id.* at 19.

On July 22, 2016, the Receiver moved for permission to engage CBRE, a real estate brokerage firm, as a consultant in order to weigh the pros and the cons of the Xpera Report. ECF No. 1341-1. The Court granted the Receiver's motion on August 30, 2016. ECF No. 1359. CBRE presented its findings on the GP properties on October 24, 2016. ECF No. 1419 (filed under seal). On November 22, 2016, the Receiver submitted a report evaluating the Xpera Report recommendations. ECF No. 1405. The Court reviewed the Receiver's report and adopted the recommendations contained therein on December 12, 2016. ECF No. 1423.

D. Washoe V Property

The Washoe V Property (the "Property")—approximately 177.45 acres of undeveloped land in Washoe County, Nevada—is held by two general partners included in the receivership: Pyramid Highway 177 Partners and Frontage 177 Partners. ECF No. 1515-1 at 2. The Property is owned outright by the Park Vegas Partners. *Id.* The Property is approximately 8.04 acres of undeveloped land. *Id.*

In 2013, after receiving authorization from the Court, Receiver obtained an appraisal of the Property at \$180,000. ECF No. 1405, Ex. A at 13. Again with the Court's approval, the Receiver obtained another appraisal in 2015 that estimated the value at \$240,000. *Id.* The Xpera Group valued the property in early 2016 to be between \$594,000 and \$630,000, and recommended that the Property be "sold now 'as is.'" *Id.*

1 In January and August 2015, the Lansing Companies (“Lansing”) sent letters of
2 intent to purchase the Property. ECF No. 1515-1 at 2. The Receiver declined those
3 offers. *Id.* Lansing contacted the Receiver in 2016 and proposed to enter into a joint
4 venture to develop the property, and with authorization from the Court, the Receiver had
5 CBRE analyze the proposal. *Id.* at 3. CBRE recommended that the proposal be declined,
6 and the Receiver agreed; the Court accepted that recommendation. *Id.*

7 In December 2016, Lansing sent the Receiver an unsolicited letter of intent to
8 purchase the property for \$600,000. *Id.* In accordance with the Court-approved modified
9 Orderly Sale procedures, *see generally* ECF No. 1309, 1359, the Receiver sent notice of
10 the offer to investors, and no substantive responses were received. *Id.* at 3. The Receiver
11 countered Lansing’s offer at \$640,000, and Lansing accepted, subject to any overbids and
12 this Court’s approval. *Id.* Receiver and Lansing executed a Purchase and Sale
13 Agreement, and on September 6, 2017, Lansing removed all contingencies other than this
14 Court’s approval. *Id.*

15 On October 12, 2017, the Receiver notified the Court that no qualified overbids
16 had been received for the Property. ECF No. 1532.

17 **E. Conclusion**


18 The Court finds that the purchase price of \$640,000 is reasonable in light of the
19 fact that this price exceeds Xpera’s valuation estimate range. Further counseling in favor
20 of the reasonableness of this amount is the fact that no broker commission is due.

21 The Court is also satisfied that the Receiver has complied with the modified
22 Orderly Sale procedures. The Receiver’s notice of the sale adhered to the modified
23 Orderly Sale procedures—which require that notice of the sale be published “in the
24 county, state, or judicial district of the United States *wherein the realty is situated*,” 28
25 U.S.C. § 2002 (emphasis added)—by publishing notice in the Reno Journal-Gazette, and
26 by providing notice to the investors. Accordingly, and given that no opposition to the
27 present Motion has been filed, or raised, and that no qualified overbid was received, the
28 Court **GRANTS** Receiver’s motion for approval of sale (ECF No. 1515).

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1. The Motion is granted;
2. The sale of the Property known as the Washoe V Property, as described on Exhibit A to the Declaration of Thomas C. Hebrank in support of the Motion by Thomas C. Hebrank, as receiver for Pyramid Highway 177 Partners and Frontage 177 Partners, to the Lansing Companies is confirmed and approved;
3. The purchase price of \$640,000 for the Washoe V Property is confirmed and approved; and
4. The Receiver is immediately authorized to complete the sale transaction, including executing any and all documents as may be necessary and appropriate to do so.

Dated: October 19, 2017


Hon. Gonzalo P. Curiel
United States District Judge